IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 141 of 2007

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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THAKOR CHAMANJI MAGANJI - Appellant(s)

Versus

PATEL RAMESHBHAI MANEKLAL - Defendant(s)

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Appearance :
MR ANSHIN H DESAI for Appellant
MR CG SHARMA for Respondent

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
5th September, 2007

ORAL JUDGMENT

Heard the learned advocates.

The Appeal is admitted on the following substantial question of law.

> ***"Whether the judgment and order passed by the lower appellate court is legal and valid in as much as the learned Fast Track Judge has failed to frame the points for determination in accordance with Order 41 Rule 31 CPC and has dismissed the appeal without considering the evidence on record."***

This Appeal, preferred under Section 100 CPC, arises from the judgment and Order dated 26th April, 2007 passed by the Presiding Officer, Fast Track Court No.2, Gandhinagar District at Kalol in Regular Civil Appeal No. 70 of 2005. The appellant before this Court is the defendant in Special Civil Suit No. 61 of 1996. The respondent-plaintiff instituted Special Civil Suit No. 61 of 1996 in the Court of learned Civil Judge [SD], Mehsana for specific performance of agreement for sale of the suit land. The said suit was allowed by the learned Civil Judge by judgment and order dated 15th April, 2002. Feeling aggrieved, the defendant preferred First Appeal No. 295 of 2005 in this Court. In view of the enactment of the Gujarat Civil Courts Act, 2005, the said First Appeal stood transferred to the District Court, Gandhinagar. The appeal was registered as Regular Civil Appeal No. 70 of 2005. The Fast Track Court, Gandhinagar at Kalol heard and decided the said

appeal. The lower appellate Court was pleased to dismiss the appeal by *impugned* judgment and order dated 26th April, 2007. Therefore, the present Appeal.

Mr. Sharma agrees that the lower appellate Court has failed to frame points for determination as is required by Order 41 Rule 31 CPC. He also agrees that the Appeal has not been heard and decided in the manner it ought to have been as first appeal under Section 96 CPC.

In above view of the matter, the Appeal is allowed. The *impugned* judgment and order dated 26th April, 2007 is *quashed* and set-aside. Regular Civil Appeal No. 70 of 2005 is remanded to the lower appellate Court for hearing and decision *afresh*. The lower appellate Court shall frame the points for determination as is required by Order 41 Rule 31 CPC and Rule 414 of the Civil Manual.

Interim relief granted pending this Appeal shall continue to operate till the appeal is heard and decided afresh by the lower appellate Court.

The parties shall bear their own cost.

{Ms. R.M Doshit, J.}

*Prakash**